UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ALVIN BALDUS, CARLENE BECHEN, ELVIRA BUMPUS, RONALD BIENDSEIL, LESLIE W DAVIS, III, BRETT ECKSTEIN, GLORIA ROGERS, RICHARD KRESBACH, ROCHELLE MOORE, AMY RISSEEUW, JUDY ROBSON, JEANNE SANCHEZ-BELL, CECELIA SCHLIEPP, TRAVIS THYSSEN, CINDY BARBERA, RON BOONE, VERA BOONE, EVANJELINA CLEERMAN, SHEILA COCHRAN, MAXINE HOUGH, CLARENCE JOHNSON, RICHARD LANGE, and GLADYS MANZANET

Plaintiffs,

TAMMY BALDWIN, GWENDOLYNNE MOORE and RONALD KIND,

Intervenor-Plaintiffs,

v.

Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Defendants,

F. JAMES SENSENBRENNER, JR., THOMAS E. PETRI, PAUL D. RYAN, JR., REID J. RIBBLE, and SEAN P. DUFFY,

Intervenor-Defendants.

Case No. 11-CV-562
JPS-DPW-RMD

VOCES DE LA FRONTERA, INC., RAMIRO VARA, OLGA VARA, JOSE PEREZ, and ERICA RAMIREZ,

Plaintiffs,

v.

Members of the Wisconsin Government Accountability Board, each only in his official capacity: MICHAEL BRENNAN, DAVID DEININGER, GERALD NICHOL, THOMAS CANE, THOMAS BARLAND, and TIMOTHY VOCKE, and KEVIN KENNEDY, Director and General Counsel for the Wisconsin Government Accountability Board,

Defendants.

Case No. 11-CV-1011
JPS-DPW-RMD

ORDER

Before WOOD, *Circuit Judge*, STADTMUELLER *District Judge,* and DOW, *District Judge.*

Since the beginning of this week, the parties have advised the Court of several significant developments in this case that bring it closer to completion. Specifically, the Voces de la Frontera plaintiffs have filed a stipulation (Docket #245) advising the Court of the settlement of their dispute with defendants concerning attorneys' fees and costs, and defendants have followed with a notice of voluntary dismissal (Docket #246) of their appeal of this Court's March 22, 2012 ruling to the Supreme Court of the United States. With those matters now behind us, all that remains before the Court are the issues relating to the Baldus plaintiffs' pursuit of attorneys' fees and costs (see Docket ##'s 228, 247, 248).

The resolution of the dispute over costs and fees between the Voces plaintiffs and defendants is a welcome development, and the reported terms seem sensible to us in view of the obvious fact that the Voces plaintiffs brought a single claim and prevailed on it. Although the remaining dispute between the Baldus plaintiffs and defendants presents several additional layers of complexity, both factually and legally, with the additional steps that we outline below, we hope that those issues can also be resolved, preferably without any need for judicial involvement.

We begin with a short discussion of the pertinent legal landscape. Under well-settled law, a "prevailing party" in certain civil rights and voting rights litigation is entitled to "reasonable" attorneys' fees. See *Hensley v. Eckerhart,* 461 U.S. 424, 429 (1983); 42 U.S.C. §§ 1973*l*(e) and 1988. Where parties have scored a clear victory on their claims – as is the case for the

Voces plaintiffs – the analysis often proceeds in a straightforward manner based on a "lodestar" calculated by multiplying the hours reasonably spent on the litigation by the reasonable hourly rate of the attorneys who secured the favorable result. But the analysis is more complicated where, as here, the parties seeking attorneys' fees qualify only as "partially prevailing parties." In this circumstance, as the Baldus plaintiffs have recognized, "[t]he degree of the plaintiff's success in relation to the other goals of the lawsuit is a critical factor to the determination of the size of a reasonable fee." *Texas State Teachers Ass'n v. Garland Indep. School Dist.*, 489 U.S. 782, 790 (1989)). To be sure, a fee award "should not be reduced simply because the plaintiff failed to prevail on every contention in the lawsuit" (*Hensley*, 461 U.S. at 435), especially where "time spent pursuant to an unsuccessful claim…contributed to the success of other [interrelated] claims." *Jaffee v. Redmond*, 142 F.3d 409, 413 (7th Cir. 1998). Yet, as a practical matter, partial success on a fee petition often follows from partial success in litigation.

Turning to the application of these legal principles to the dispute at hand, we cannot share the Baldus plaintiffs' assessment (see Doc. 247) that their motion for attorneys' fees and costs "has been fully briefed," nor can we decide issues of liability for fees based on the scant materials that have been submitted to date, as they ask us to do. The issues are simply too complex to be worked out on the back of the proverbial envelope. Just to give two examples, any rational assessment of the extent to which the Baldus plaintiffs may be entitled to fees as a "prevailing party" would require: (1) a detailed breakdown of the work spent on their winning claims versus their losing claims; and (2) a considered analysis of the respective work performed by counsel for the Baldus plaintiffs and counsel for the Voces plaintiffs on the

voting rights claim for Assembly Districts 8 and 9 on which both sets of plaintiffs prevailed. In view of the substantial amount already paid in attorneys' fees and costs by defendants to the Voces plaintiffs, the latter analysis is particularly crucial to avoid overcompensating plaintiffs (and correspondingly overcharging defendants) in the event that an award to the Baldus plaintiffs as "partially prevailing parties" is appropriate. In short, defendants are correct (see Docket #248) that additional, detailed disclosure of the basis for the Baldus plaintiffs' claims for fees and costs is a prerequisite to any serious progress toward resolution of the remaining fee issue – whether through negotiation or litigation.

Cognizant that resources expended on litigating fee petitions are essentially rolled into the pot for potential recovery alongside the fees spent in litigating the underlying merits (see, e.g., *Greenfield Mills, Inc. v. Carter,* 569 F. Supp. 2d 737, 754 (N.D. Ind. 2008)), we think the prudent course is for the parties to take several weeks to try to resolve the issue on their own. Although it will be incumbent on the Baldus plaintiffs to go much further than they have to date in providing to defendants the records that support the claimed fees and costs, they very likely can do so more informally and less expensively in a settlement context than in actual court filings. Even if at the end of that process the parties are unable to resolve the fee dispute on their own, their work would be portable for use in court filings.

We therefore urge the Baldus plaintiffs and defendants to immediately commence the production of information to facilitate a full and frank discussion of the pending request for fees and costs. If an agreement has not been reached and communicated to the Court by August 1, 2012, the parties must file a joint status report on that date indicating either that: (1)

negotiations are ongoing and may result in agreement; or (2) they have reached an impasse. If the parties have arrived at a stalemate, the Court will set a schedule for prompt additional briefing on the Baldus plaintiffs' request and bring this entire matter to a close.

SO ORDERED.